

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAY BRADSHAW,

Plaintiff,

9:19-cv-428 (BKS/TWD)

v.

CORRECTIONS OFFICER GOLLINGER, et al.,

Defendants.

Appearances:

Plaintiff pro se:

Jay Bradshaw
08-A-3654
Upstate Correctional Facility
Malone, NY 12953

For Defendants:

Letitia James
Attorney General of the State of New York
Jonathan S. Reiner
Assistant Attorney General, of Counsel
The Capitol
Albany, NY 12224

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Jay Bradshaw, a New York State inmate, commenced this action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Upstate Correctional Facility. (Dkt. Nos. 1, 75). On August 9, 2021, Defendants Fletcher, Woodruff, Gollinger, Gallagher, Walrath, and Thomas filed a motion under Fed. R. Civ. P. 12(b)(6) to dismiss the cause of action arising from “Incident 2” for failure to state a claim upon which relief may be granted. (Dkt. No. 86). Plaintiff’s response, a cross motion to supplement pleadings, was filed on August 25, 2021.

(Dkt. No. 89). Defendants opposed Plaintiff's motion. (Dkt. No. 93). This matter was assigned to United States Magistrate Judge Thérèse Wiley Dancks who, on November 2, 2021, issued a Report-Recommendation recommending that Plaintiff's motion to supplement be granted insofar as Plaintiff wished to have the allegations in the proposed supplemental complaint considered in opposition to the motion to dismiss, and that Defendants' motion to dismiss be granted as to Defendant Woodruff and denied as to the remaining Defendants. (Dkt. No. 95).

No objections to the Report-Recommendation have been filed. As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, 28 U.S.C. § 636(b)(1), the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 95) is **ADOPTED** in its entirety; and it is further

ORDERED that Plaintiff's motion to supplement (Dkt. No. 89) is **GRANTED** insofar as Plaintiff wishes to have the allegations in the proposed supplemental complaint (Dkt. No. 89-1) considered in opposition to the motion to dismiss; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 86) is **GRANTED** as to Defendant Woodruff, and Plaintiff's Eighth Amendment claim against Defendant Woodruff arising from "Incident 2" is **DISMISSED**; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 86) is otherwise **DENIED**; and it is further


ORDERED that Plaintiff is directed to submit a second amended complaint that combines the allegations in the amended complaint (Dkt. No. 75) with the allegations in the proposed supplemental complaint (Dkt. No. 89-1), in proper numbering form, without any other changes, **within thirty (30) days** of the date of this Order; and it is further

ORDERED that defendants Gollinger, Thomas, Gallagher, Walrath, and Fletcher are directed to respond to the second amended complaint within twenty-one (21) days of Plaintiff's filing of the second amended complaint; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 24, 2021
Syracuse, New York


Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge